REMARKS

Originally filed claims 2 and 4 as amended for form, are the only active claims pending in this application. Claims 1, 3 and 5-12 are canceled. The foregoing separate sheets marked as "Listing of Claims" shows all the claims in the application, each with an indication at its first line showing the claim's current status.

The Office Action rejects the examined claims 1, 8, 10 and 12 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent Publication No. 2003/0044165 ("Wood") in view of U.S. Patent No. 6,898,762 ("Ellis"). Office Action at pages 4-10.

The Office Action rejects the examined claims 2, 4 and 11 under 35 U.S.C. § 102(a) as being unpatentable over U.S. Patent No. 6,971,119 ("Arsenault") in view of Ellis.

To expedite the instant application, Applicants have amended base claim 2 for form, and have canceled claims 1, 3 and 5-12, without prejudice or disclaimer of their right to file and prosecute these and broader claims by subsequent application.

Applicants respectfully refer to claim 2, as amended above, and to its example support described at Figs. 28 and 29, and at page 65, lines 15-25, of the original specification.

Applicants claim 2 invention includes, in combination with other elements:

> a program processing apparatus for executing a program process, having means for transmitting a privacy level data through said network, means for transmitting <u>based at least in part on said privacy level data</u> a condition data through said network indicating a condition of said programs in said program processing apparatus

Claim 2, currently amended, at lines 4-8.

Example support for the claim 2 "program processing apparatus" is shown in Applicants' Fig. 29 as the "program operation terminal apparatus," which is generally labeled as item 120. As shown, the "program operation terminal apparatus" has a privacy policy database 124 and a program condition information preparation section 51. The program condition information preparation section 51 sends an amount of information concerning the condition in the user terminal apparatus 120 of the programs, *i.e.*, conditions such as whether the programs have been recorded, reserved to be recorded and so forth, <u>where the amount of such information sent</u>

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depends on the privacy level stored in the database 124. *See* Applicants' Specification at page 65, lines 15-25. For example, as described, if the user sets a privacy level of, for example, "level 1" the user's terminal (e.g., item 120), sends the user's program condition data to the electronic guide server. *Id.* If, on the other hand, the user has set a privacy level of, for example, "level 3" the user's terminal does not send program condition data to the electronic guide server. *Id.*

Claim 2 is amended to more clearly recite this feature of the program condition data sent by the programming processing apparatus being, at least in part, based on the privacy level data. *See* claim 2, currently amended, at lines 3-5.

Applicants respectfully submit that the collected teachings of Arsenault and Ellis disclose nothing, and suggest nothing of a user having a privacy level, nothing of sending a privacy level to a program guide server, and nothing of a user program processing apparatus that sends, or does not send, program condition data depending or based on a privacy data.

Arsenault describes a system wherein a user can download or cache a movie at the user's receiver station 34, and wherein the broadcaster receives indicators that a movie has been cached. Arsenault, at column 16, lines 3-17. Arsenault describes nothing, and suggests nothing, of the user having any control over whether or not the broadcaster receives this information. Stated differently, Arsenault's "indicators 142 and 144" are simply sent; there is no description or suggestion, whatsoever, of the sending of these indicators being conditional upon anything, much less anything comparable to a "privacy level" set by the user.

Ellis describes a system in which a "[p]rogram guide server may, for example, identify episodes that users have not yet watched." Ellis at column 19, lines 47-63. Actually, Ellis describes its program guide server as storing a thorough and complete history of the users' viewing of the programs. Id at column 19, line 10 through column 20, line 16. Even further, the program guide server of Ellis system prepares a relational database of, and user profiles based on the viewing history. Id, at column 20, lines 16-58. Ellis teaches nothing, anywhere, of the user having any control over sending his or her viewing history to the program guide server.

Applicants respectfully submit that the collected teachings of Arsenault and Ellis disclose nothing of a user sending a privacy level to a program guide server, and nothing of a user program processing apparatus that sends, or does not send, program condition data depending on the level of a privacy data. Applicants respectfully submit that Arsenault and Ellis teach, at best, the opposite of Applicants' invention. The references teach the opposite because they teach a user apparatus as sending condition data, including viewing history, without any ability or provision for the user to control such information.

Applicants further submit that modifying either reference, particularly Ellis, to permit user control over the viewing history being sent, or not sent, to the program guide server would materially change the principle of operation of Ellis' system, would make it unacceptable for its intended use or purpose. The intended purpose of the Ellis system is to "analyze the viewing histories" and to "target advertising" and to collect "program ratings based on the viewing histories." Ellis, at Abstract. Ellis at Figs. 5-13. If a user chose to set a privacy level such that the viewing history were not sent to the program guide server would defeat these purposes and objectives.

Claim 4 depends from claim 2 and, therefore is patentable over the prior art of record for at least the reasons presented above.

Further, Applicants respectfully respond that the Office Action misinterprets Ellis in citing it as a reference showing "a consideration" for distributing a program "which differs depending on a privacy level of information sent from said program processing apparatus." Office Action at page 13. Base claim 2 recites the program processing apparatus as transmitting the condition data based, at least in part, on the privacy level. Ellis discloses nothing that controls a condition data sent from the program processing apparatus. Ellis therefore discloses nothing meeting the broadest reasonable meaning of the claim 2 "privacy level." Since Ellis discloses nothing meeting the privacy level limitation it cannot disclose, or suggest, anything of a different consideration for distributing, or anything else, for different privacy levels.

Conclusion

In view of the foregoing, Applicants respectfully request that the application be reconsidered, that claims 2 and 4 be allowed, and that the application be passed to issue.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,

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